



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[WAC 03 061 52332]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 02 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish she was eligible for late registration.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on November 19, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On January 12, 2004, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence of identity and two photographs. The applicant, in response, provided evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time frames. She also submitted a photocopy of the biographic page of her Salvadoran passport, certified mail receipts indicating that a package was mailed to the California Service Center on November 12, 2002, and a money order dated November 12, 2002, payable to the Immigration and Naturalization Service in the amount of \$220. The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on February 28, 2004.

On appeal, the applicant asserts that she mailed her TPS application to the California Service on September 10, 2002, "only one day late," but the Immigration and Naturalization Service (the Service), now CIS, processed the application too late.

The evidence submitted by the applicant on appeal does not support her assertion. The certified mail receipt and the money order receipt are both dated November 12, 2002, not September 10, 2002, as claimed by the applicant. The certified mail return receipt was receipt stamped at the California Service Center on November 19, 2002. Therefore, the applicant's claim that she filed her application "only one day late" cannot be accepted.

The applicant further asserts that she qualifies for late initial registration because she "filed an application for late registration within 60 days of the expiration."

It appears the applicant is attempting to assert that she qualifies for late initial registration because her application was received at the California Service Center within 60 days of the expiration of the initial registration period for Salvadorans. However, the regulation at 8 C.F.R. § 244.2(f)(2) makes no provision for late initial registration because an application for TPS is filed within 60 days of the expiration of the initial registration period.

The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the applicant was apprehended by the United States Border Patrol on March 29, 2001, near Los Indios, Texas, after having crossed the Rio Grande River from Mexico. The applicant admitted that she had crossed the border illegally, and indicated that she was a national of Honduras. She was issued a Notice to Appear for a removal hearing before an Immigration Judge in Harlingen, Texas, at a date and time to be determined and released on her own recognizance.

On April 18, 2001, the applicant's attorney was served with a notice ordering the applicant to appear for her removal hearing before the Immigration Judge in Harlingen, Texas, on September 28, 2001. The applicant failed to appear for her removal hearing. On November 13, 2001, the Immigration Judge ordered the applicant removed in absentia. On January 15, 2002, the District Director, Harlingen, issued a Form I-166 ordering the applicant to appear at the Service office in Los Fresnos, Texas, on February 14, 2002, for deportation. The applicant failed to appear for deportation as ordered. The record contains a Warrant of Removal/Deportation that is still outstanding.

Additionally, the applicant claimed to be a Honduran national when she was apprehended. She applied for TPS as a citizen of El Salvador. In view of this contradiction, it is concluded that the applicant has not established her nationality.

Furthermore, although the applicant claimed on the Form I-821, Application for Temporary Protected Status, that she first entered the United States on March 15, 2000, she was apprehended by the United States Border Patrol on March 29, 2001, after crossing the Rio Grande River from Mexico. Therefore, she cannot establish continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001. The application also must be denied for these reasons.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.